JUSTICE PLACED AHEAD OF POLICY

(Continued From Page One—Column 1.)

on March 15, 1892. On October 1, 1899, his aunt, Mrs. Susan M. Baldwin, died, leaving him a legacy of $2,864 in trust, until his health is so restored that he can take care of it. The income was to be applied to buying him clothes and comforts. The hospital brought suit to secure the payment to it of the income on its account for Brown's maintenance, and further asked for a judgment to the effect that if at his death the income has not been sufficient to pay the account, the principal of the fund should be applied for this purpose. The lower court decided for the hospital in part. The Supreme Court reversed the judgment of the Corporation Court of the city of Staunton, and entered such decree as the lower court should have entered, in favor of Brown's committee and against the hospital. The opinion was by Judge Cardwell.

Breach of Covenant Alleged.

Judge Whittle rendered an opinion reversing the Circuit Court of Botetourt county in the case of the Norfolk and Western Railway Company against Mundy. This was an action brought by the railroad company to recover damages for a breach of covenant involving alleged false representation. The defendant owned certain water rights in a stream which flowed through a race across the plaintiff's right of way. In consideration of $500, Mundy gave the railroad the right to fill in its trestle at that point, providing only one culvert. It seems that prior to this he had conveyed his interest in the lot to which the water right was an appurtenance. It finally fell into the hands of one Obenchain, who filed a bill in equity against the railway, securing the relief he sought. The railway then sued Mundy, the jury giving it $77.41. It appealed.

The courts holds that it is a well settled rule that the measure of damages for a breach of covenant of seisin, where nothing passes by deed, is the consideration paid, with interest, and therefore that the road is entitled to recover the entire amount paid. It is further held that Mundy is bound by the proceedings in the Obenchain suit. A new trial is ordered.

Insurance Tax Upheld.

The Circuit Court of Frederick county is upheld in an opinion by Judge Whittle in the suit of the Scottish Union Insurance Company against the city of Winchester. This was a suit to enjoin the city from the collection of a license tax, on the ground that the ordinance, which imposes both a definite license tax and ad valorem tax, is repugnant to the State Constitution. It is contended that the two sections covering the ground are contradictory. The Supreme Court holds that the distinction is but shadowy, and it affirms the decree of the Circuit Court, which dismissed the bill of the insurance company on a demurrer to the evidence by the city.

Loan to Trust Estate.

A reversal in part was the result in the suit of Shirkey and others against Kirby, trustee, on an appeal from judgment of the Circuit Court of Augusta county, involving the power of a court of equity, independently of the statute, to secure a loan for necessary repairs and for the payment of a collateral inheritance tax on real estate held in trust.

By will a farm was given for joint use of a husband and wife during their lives, with the remainder in fee simple to their children. The trustees found a lien on the property for the tax, the personal property small, and the residence unsafe and uninhabitable, and actually falling down. He advanced the money to make the dwelling fit to live in.

The Circuit Court gave the trustee relief, allowing the borrowing of money on a trust deed on the property. The money was not repaid, and the lender was about to foreclose when the infant children petitioned that the former decree be set aside as illegal. The lower court adhered to its former position, and the appeal followed.

"The relief sought," says the Supreme Court, per Judge Whittle, "is addressed to the general jurisdiction of chancery courts with respect to trusts and trustees, a jurisdiction coeval with the foundation of the Commonwealth, and the exercise of which constitutes a basic principle of the system of equity jurisprudence." It holds that the Circuit Court had power to grant the relief prayed for, but that it was erroneous to fix a lien upon the remainder after the expiration of the trust estate. The decree is therefore reversed and annulled in this respect, but is otherwise affirmed, and it is remanded to the Circuit Court for such proceedings as may be necessary to submit the trust estate to rental during its continuance, or for such shorter period as may be necessary to discharge the lien with costs.

Penalty for Delay.

A penalty of $10 per day for delay in the construction of a dwelling is upheld in the decision in the case of Crawford against Heatwole P. Hedrick, in which the opinion is by Judge Whittle. This hails from the Circuit Court of Rockingham county. The lower court held that this sum was damages, and not reasonable in lieu of rent, and that it was not recoverable. In the Supreme Court it is decided that the intention of the parties to the contract was unmistakable; that the house was not intended to be rented, but as a home, and therefore a rental basis is no just criterion for considering the matter, and that $10 per day for a property costing $7,000 was not unreasonable. The case is remanded for a new trial.

Autos on Streets.

Automobiles and their privileges are discussed in Baugher against Harman, from the Circuit Court of Augusta county. Harman was holding a horse, which was being hitched on a Staunton street, when an automobile driven by Baugher came by. The horse became frightened, and ran over Harman, injuring him. The lower court gave him a judgment. Judge Whittle, for the Supreme Court, thinks the evidence did not show that the accident could have been prevented by Baugher, and that it is indicated he was not aware of the danger until he was passing the scene. In any case, the horse was held by three men, and there was nothing to lead any one to suppose that it would become unmanageable. Negligence, thinks the court, was not established.

"In the interest of public safety," it says, "we fully appreciate the importance of a rigid enforcement of the law against the negligent operation of automobiles over the highways of the Commonwealth. At the same time such consideration can afford no justification for mulcting the owners or drivers of such machines, whether with damages or fines, for inevitable accidents not due to their fault or negligence, yet to the happening of which they may have innocently contributed." The verdict is therefore set aside and the case remanded for a new trial.

Another Smoke Case.

Chesapeake and Ohio Railway Company against Katherine Greaver is a case like that of Terrell, also coming from the Corporation Court of the city of Charlottesville. The court holds, in an opinion by Judge Cardwell, that the railway company has ample space to erect a suitable building over its pits and tracks so as to protect adjacent property from injury from escaping smoke and cinders and dust. The lower court gave the plaintiff damages, and this judgment is affirmed.

Death by Accident.

In Crowder's administrator against the Ivanhoe Furnace Company, from the Circuit Court of Wythe county, the decree is affirmed. This case was tried twice. In the first the company and also a foreman, John Hocking, were sued for damages by reason of the death of Crowder while blasting rock. Hocking had directed Crowder to remove dirt and gravel from a blast which had failed to explode, and while he did this the fatal explosion occurred. The lower court set aside the judgment in the first case, which was against the company, but instead of entering judgment for it a new trial was granted. Later the suit was dismissed as to Hocking and a verdict was entered for the administrator.

Held in opinion by Judge Keith that the verdict against the corporation was equivalent to one against Hocking; that the court was entirely competent of its own motion to set aside a verdict, and that no error was committed in permitting the dismissal of the suit as to Hocking.

Evidence Governs.

Weighing of the facts, rather than knotty questions of law, seem to have governed the decision in the case of the Chesapeake and Ohio Railway Company against Corbin's administrator, from the Circuit Court of Alleghany county. Corbin was walking on the railway tracks when struck and killed. Judge Whittle, voicing the opinion of the court in affirming the lower tribunal, says that the rule that authorizes those who are driving a train to assume that a trespasser on the track will exercise his faculties and take care of himself, does not apply when the engineer has reason to believe that the trespasser is not aware of the approach of the train.

Fill Damages Sand Bank.

In the Virginian Railway Company against Jeffries' administrator, from the Circuit Court of the city of Roanoke, it is held that the fact that the suit was not brought by the party who owned the sand bank alleged to have been destroyed by the railroad's fill in the Roanoke River, is not sufficient to warrant a reversal of the judgment in the lower court, inasmuch as the damage did not appear until later, when floods came. This opinion was by Judge Cardwell.

Insurance Company Wins.

Judgment was entered in favor of the Phoenix Insurance Company, which appealed from a judgment entered in the suit against it by Sherman in the Circuit Court of Wise county. Sherman's stock of goods, which was insured in the company, was burned. The Supreme Court, by Judge Cardwell, holds that the insured totally failed to comply with the provisions of the iron safe clause. In his comment, Judge Cardwell says it is a matter of impossibility to form an intelligent conclusion from Sherman's books as to what business he had transacted or what stock of goods was in the store and destroyed by the fire.

Second Reversal.

For the second time the court of last resort reverses the case of the Baltimore and Ohio Railroad Company against Benjamin E. Lee. Lee was injured by being thrown from a combination car on the yards at Harrisonburg, when a train was backed to the car. In reversing the Circuit Court of Rockingham county, Judge Cardwell says that it clearly appears that Lee carelessly and needlessly went on the platform when he not only had every reason to anticipate contact, but actually heard the train approaching. The injury was due his own careless and negligent conduct. Judgment should be entered upon the demurer for the plaintiff in error.

All Parties Liable.

Because the damages assessed against it by the Circuit Court of Pulaski county contemplated making it solely liable for damages alleged to have been done to the sandbar of the Gibboney Sandbar Company, on New River, the case is reversed. Judge Cardwell holds that each of the parties is liable only for injuries due to his own negligence. The judgment for the sandbar concern is annulled and the case remanded for a new trial.

Wrongful Act.

W. L. Bryan, an appellant from Rockbridge county, is rapped in Judge Cardwell's opinion. The defendant in error is Addie Nash, to whom Archie Ranson, who she was engaged to marry, willed a piece of property. Bryan bought the property from others. Later a copy of Ranson's will, which had been recorded in Washington, D. C., was probated in Rockbridge county, showing Addie Nash to be the owner. The court, in affirming a judgment of the lower court, says there is nothing to show that Addie Nash misled Bryan, while there is proof that Bryan knew that she claimed it under the will, and that he wrongfully undertook to acquire title to the land from sources other than the rightful owner. The court may be judge, it is held, of the authentication of copies of wills.

Lower Court Upheld.

In Valz against Colner, from the Circuit Court of Augusta, the Supreme Court says that on a bill of review proofs cannot be considered, and that whether or not there is error in the decree complained of cannot be determined, since this court cannot look to the facts upon which the decree rested. The case involves a city lot in Staunton. The presumption, says Judge Cardwell, is that the trial court was correct, and the decision is affirmed.

Division of Property.

It is decided in Jackson and others against Jackson and others, involving the division of inherited property, that while under the statute power is expressly given to courts to make allotment of a part and a sale of the residue, the true rule, where the element of consent does not appear, is to divide the part allotted among all those entitled to share in it, and to sell the residue and distribute the proceeds of the sale according to the rights of those entitled. The case, which is from the Circuit Court of Augusta county, is reversed, Judge Keith rendering the opinion.

Tax Sale Deed Valid.

That a tax deed must be regarded as prima facie evidence of title is held in Wright against Carson and another, from the Circuit Court of the city of Roanoke, in an ejectment case. The Supreme Court entered judgment for the plaintiff in error and costs, deciding that the sale of the lot in question for taxes was valid. The opinion was by Judge Keith.

Road Must Stick to Charter.

A railroad cannot exercise powers not conferred by its charter, said Judge Keith, in National Car Advertising Company against the Louisville and Nashville Railroad Company. The road gave Lovejoy by contract the right to use the side doors of all its boxcars for advertising purposes, which right was assigned to the Car Advertising Company. The road refused to comply with its contract on the ground that it had no right to make it, in which position it is now upheld. In the contract the road had agreed to transport the material and employes of Lovejoy for his work. The court says that it is unlawful for any transportation company to make or give undue or unreasonable preference or advantage to any person or corporation, and that such a contract cannot be enforced in the courts of this State. The case came from the Circuit Court of Wise county, which gave the railroad company judgment, and which is sustained.

Scire Facias Defective.

Wright's administrator against Palmer and others, from the Corporation Court of the city of Bristol. Opinion is by Judge Keith, affirming the lower court. The defendants in this case pleaded statute of limitation on a judgment. A scire facias had issued to revive the judgment, but failed to recite the judgment to be revived or to make reference to it. It is held that a scire facias writ, which serves the double purpose of a writ and a declaration, should state all of the facts necessary to authorize the relief sought.

Residence of Corporation.

In D. S. Cook & Son Mining Company vs. Thompson from the Circuit Court of Botetourt county, in an opinion by Judge Harrison, it is decided that a corporation can have no legal existence outside of the boundaries of the sovereignty in which it is located. While it may, by its agents, transact business anywhere, unless prohibited by its charter or prevented by local laws, it can have no residence or citizenship except where it is located by or under the authority of its charter. Caiph Thompson, an infant, had sued for damages for personal injuries, alleging negligence from the careless or improper placing of a dynamite thawer. The lower court gave him damages, the judgment being affirmed.

Color of Title.

The mere institution of condemnation proceedings on the statement that the land in question is needed for public purposes, cannot give color of title, says Judge Harrison for the court, in Knight and another against Grim and others, from the Circuit Court of Clarke county. A piece of ground had been condemned for a schoolhouse, the plaintiffs, the owners, not being parties to the proceedings, the trustee being a party. The mere filing of a petition does not give color of title, says the court, for in such case there would be little protection for property rights. The defendants have not shown adverse possession, as the final order in condemnation proceedings had been instituted less than fifteen years before the suit was brought. The lower court is reversed.

Company Not at Fault.

Sollenberger, a brakeman, had been working for forty-eight hours, it is alleged, when he fell asleep on the track and was killed by a train. His administrator got damages in the Circuit Court of Wise county against the Norfolk and Western Railway Company. In reversing this judgment, Judge Keith says that the evidence does not show that the company or its employes failed to exercise reasonable diligence to prevent the injury complained of after they discovered his peril, or had such notice as would put a reasonably prudent man upon the alert to discover the same and to guard against the injury.

Sale by Acre Presumed.

It is well settled that courts of equity do not favor contracts of hazard, and in real estate sales, where quantity is referred to in the contract and the language does not plainly indicate that the sale was intended to be gross, must be presumed to be a sale by acre. Such is the ruling pronounced by Judge Harrison in McComb against Gilkeson, from the Circuit Court of Augusta county. The court is of the opinion that the lower court erred, and that the appellant is entitled to a proper abatement of the balance of purchase money on a farm which was found, when surveyed, to be short of the size named in the deed. Reversed.

Contributory Negligence.

Virginia Portland Cement Company against Seal, from the Circuit Court of Augusta county. Opinion by Judge Harrison. Seal in this case contributed to his own injury, thinks the Supreme Court, because of his negligence, and he is not entitled to the judgment given him in the lower court.

Other Suit Does Not Interfere.

Taylor against Hedrick, from the Circuit Court of Rockingham county. This suit was brought to partition a lot of land, which Taylor had long before deeded to the other parties to suit. It was contended that the matter of title was res judicata by reason of proceedings in certain ended cases in Rockingham county. In affirming the judgment, Judge Harrison says that the decree in the other case furnishes no ground for the claim now made by Taylor, and that said decree constitutes no bar to the right of appellees to rely upon their deed from him.

Suit Over Tomatoes.

In Norfolk and Western Railway Company against Potter, from the Circuit Court of Botetourt county, which is reversed, it was claimed for Potter that the record does not show that the railway company's setoff was filed. The Supreme Court, by Judge Harrison, says that the record shows that the account was in the record before the trial began, and that the plaintiff had notice of it. Potter sued for damages for delay in shipment of canned tomatoes. The questions for the jury to properly consider are outlined in the decision.

Mistake in Recordation.

A mistake in recording a deed seems to have caused the suit of Hurricane Lumber Company against Lowe, from the Circuit Court of Buchanan county. Lowe sold the lumber concern some standing timber, which it cut down and hauled away. When about to pay for it, the company's attorney found that Lowe had conveyed the "merchantable" timber to another party. He produced the original deed, showing that it read "unmerchantable," but payment was still withheld, hence the suit. The jury gave Lowe a verdict for the full amount, which is affirmed, by opinion by Judge Keith.

"Imprudent Conduct."

Cody, an employe of the Norton Coal Company, bought some fuses from the company commissary. When making a blast, the fuse for some time failed to ignite, finally doing so suddenly, injuring him severely. He sued the company, the lower court sustaining a demurrer to the evidence and dismissing the suit. This judgment is affirmed.

In upholding the decision of the Circuit Court of Wise county, Judge Keith says that "nothing could have been more imprudent and reckless than the conduct of the plaintiff. To put flame or fire to a fuse connected with dynamite, the object of which was to explode the dynamite, and to remain by it until the explosion occurred, upon the unwarranted assumption that the fuse was defective, instead of seeking a place of safety and there awaiting the result, was to invite and court disaster. We are of opinion that the contributory negligence of the plaintiff was the proximate cause of the accident, and that the demurrer to the declaration was properly sustained."

SUPREME COURT CASES

Regular Docket Resumed—Case From Richmond Being Heard.

Following the rendering of decisions in the Supreme Court of Appeals yesterday morning, the regular docket was resumed.

The case of Heckscher and others against Blanton and others, begun on Wednesday, was fully argued by Hill Montague for the appellants and by S. S. P. Patteson for some of the appellees, and submitted to the court.

The case of the Atlantic Coast Line Railroad Company against Caple's administratrix was argued by Edwin P. Cox and William B. McIlwaine for the plaintiff in error and by M. J. Fulton for the defendant in error, and submitted.

Caple, a colored brakeman, was fatally injured in the Manchester yards of the company. Contributory negligence is alleged.

The case of the Virginia-Carolina Chemical Company against the Southern Express Company, from the Circuit Court of the City of Richmond, was partly argued by John A. Coke, Jr., for the plaintiff in error, and continued to to-day. This involves the loss of promissory notes belonging to the fertilizer company by the express company.

The next cases to be called are as follows: Johnson against Michaux, Board of Handley Trustees against Winchester Memorial Hospital and others; Bradley & Co. against the City of Richmond; City of Danville against Thornton; Miller and others against Penniman & Bro.; Young against the Camp Manufacturing Company, and Wright against the Camp Manufacturing Company, being cases Nos. 9 to 15, inclusive, on the argument docket.

Auction Sales, Today.

By The Valentine Auction Co., Auctioneers.

Office Furniture, Typewriters, Letter Press at Auction

THIS FRIDAY, NOVEMBER 19TH.

We will sell at our auction salesrooms, No. 618 East Broad Street, at 11 o'clock A. M., on above date, the following office furniture:

Five Quartered Oak Roll Top Desks, with inclosed pigeon holes and disappearing typewriter compartment; 6 Quartered Oak and Mahogany Flat Top and Disappearing Typewriter Desks, 1 Small Typewriter Desk, 1 Oak Standing Desk and Stool, 12 Quartered Oak Revolving Typewriter and Office Chairs, Oak Office Table, Patented Letter Press, with wringer and bath; 1 fine Smith Premier Typewriter, 1 Remington Typewriter, 12 Typewriter Tables, Fine Axminster and Brussels Office Floor Rugs, 12 Leather Seat Office Chairs, 3 Oak Sectional Bookcases, Gentleman's Oak Office Wardrobe and other pieces of office furniture. Sale positive.

THE VALENTINE AUCTION CO.

Auction Sales, Future Days.

By N. W. Bowe & Son, Real Estate Auctioneers.

TRUSTEE'S SALE OF THAT ATTRACTIVE FRAME DWELLING,

No. 2202 Chaffin St.,

BY AUCTION.

In execution of a certain deed of trust, dated August 13, 1909, and recorded in Richmond Chancery Court, in D. B. 204-A, page 77, I will, at the request of the beneficiary, there having been default in the payment of a part of the debt thereby secured, sell by public auction, on the premises, on

MONDAY, NOVEMBER 22, 1909, at 3:45 P. M., that attractive dwelling above referred to, No. 2202 Chaffin Street, with the lot upon which it stands, fronting 25 feet 6½ inches on the north line of Chaffin Street, between Sycamore and Strawberry Streets, and running back 120 feet to an 18-foot alley. This property will make a nice home or a good investment.

TERMS: Cash.

STUART BOWE, Trustee.

By N. W. Bowe & Son, Real Estate Auctioneers.

TRUSTEE'S SALE OF THAT ATTRACTIVE FRAME DWELLING,

No. 2204 Chaffin St.,

BY AUCTION.

In execution of a certain deed of trust, dated August 13, 1909, and recorded in Richmond Chancery Court, in D. B. 204-A, page 74, I will, at the request of the beneficiary, there having been default in the payment of a part of the debt thereby secured, sell by public auction, on the premises, on

MONDAY, NOVEMBER 22, 1909, at 4 P. M., that attractive dwelling above referred to, No. 2204 Chaffin Street, with the lot upon which it stands, fronting 25 feet 7 inches on the north line of Chaffin Street, between Sycamore and Strawberry Streets, and running back 120 feet to an 18-foot alley. This property will make a nice home or a good investment.

TERMS: Cash.

STUART BOWE, Trustee.

By N. W. Bowe & Son, Real Estate Auctioneers.

TRUSTEE'S SALE OF THAT ATTRACTIVE FRAME DWELLING,

No. 2206 Chaffin St.,

BY AUCTION.

In execution of a certain deed of trust, dated August 13, 1909, and recorded in Richmond Chancery Court, in D. B. 204-A, page 71, I will, at the request of the beneficiary, there having been default in the payment of a part of the debt thereby secured, sell by public auction, on the premises, on

MONDAY, NOVEMBER 22, 1909, at 4:15 P. M., that attractive dwelling above referred to, No. 2206 Chaffin Street, with the lot upon which it stands, fronting 25 feet 7 inches on the north line of Chaffin Street, between Sycamore and Strawberry Streets, and running back 120 feet to an 18-foot alley. This property will make a nice home or a good investment.

TERMS: Cash.

STUART BOWE, Trustee.

By N. W. Bowe & Son, Real Estate Auctioneers.

TRUSTEE'S SALE OF THAT ATTRACTIVE FRAME DWELLING,

No. 2208 Chaffin St.,

BY AUCTION.

In execution of a certain deed of trust, dated August 13, 1909, and recorded in Richmond Chancery Court, in D. B. 204-A, page 68, I will, at the request of the beneficiary, there having been default in the payment of a part of the debt thereby secured, sell by public auction, on the premises, on

MONDAY, NOVEMBER 22, 1909, at 4:30 P. M., that attractive dwelling above referred to, No. 2208 Chaffin Street, with the lot upon which it stands, fronting 25 feet 7 inches on the north line of Chaffin Street, between Sycamore and Strawberry Streets, and running back 120 feet to an 18-foot alley. This property will make a nice home or a good investment.

TERMS: Cash.

STUART BOWE, Trustee.

By A. J. Chewning Company, Real Estate Auctioneers.

AUCTION SALE OF

No. 809 N. Fourth St.

ON TUESDAY, NOVEMBER 23, 1909, AT 5 O'CLOCK P. M., FOR PURPOSES OF DIVISION.

This is good property for investment or home. Deep lot, running back to an alley, and it may go at a great bargain. Why not you come and secure this property, which will have to be sold?

TERMS: One-third cash; balance at twelve months, for notes, interest added, or all cash.

A. J. CHEWNING COMPANY, Auctioneers.

Real Estate for Sale.

FOR SALE, PRIVATELY,

TO SETTLE AN ESTATE, HOUSE NO. 1112 W. MARSHALL ST., ten-room brick; will pay 10 per cent. on $2,700. Terms easy. Will sell cheap. For information, apply to SMITH & WOODALL, Park and Cary Streets, city.

FOR SALE,

Overlooking Chimborazo Park, your choice of the following Brick Dwellings, viz.: Nos. 218, 220 and 280 North Thirty-second Street. For prices, see EDWARD S. ROSE CO., Real Estate and Loans, No. 11 N. Eleventh Street.